Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

No. 73-1123

UNITED STATES OF AMERICA,
Petitioner,

—v.—

RALPH FEOLA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 18, 1974
CERTIORARI GRANTED APRIL 15, 1974

IN THE

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RELEVANT DOCKET ENTRIES

12-27-72 Filed Indictment

* * * *

1- 2-73—Jury trial begun before BRIANT, J.

* * * *

1- 8-73—Trial continued and concluded. All defendants found guilty as charged.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

72 Cr. 1372

[Filed Dec. 27, 1972, U.S. District Court, S. D. of N. Y.]

UNITED STATES OF AMERICA

v.

ENRIQUITO ALSONDO, MICHAEL FARR, RALPH FEOLA, and HENRY ROSA, DEFENDANTS

INDICTMENT

The Grand Jury charges:

1. From on or about the 1st day of August, 1972, up to and including the date of the filing of this indictment, in the Southern District of New York, ENRIQUITO ALSONDO, MICHAEL FARR, RALPH FEOLA, and HENRY ROSA, the defendants and others to the Grand Jury unknown, unlawfully, wilfully and knowingly, combined, conspired, confederated and agreed together and with each other to violate Section 111 of Title 18, United States Code.

2. It was a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would forcibly assault, resist, oppose, impede, intimidate and interfere with agents of the Bureau of Narcotics and Dangerous Drugs, persons designated in Section 1114 of Title 18, United States Code, while they were engaged in and on account of the performance of their official duties.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about August 31, 1972, defendants FARR and ROSA entered a vehicle in the vicinity of 50th Street and Second Avenue, New York, New York.

2. On or about August 31, 1972, defendants FARR and ROSA entered Apartment 405, 155 West 68th Street, New York, New York where defendants ALSONDO and FEOLA were waiting.

3. On or about August 31, 1972, defendant ALSONDO drew a Pietro Beretta handgun.

(Title 18, United States Code, Section 371.)

SECOND COUNT

The Grand Jury further charges:

On or about the 31st day of August, 1972, in the Southern District of New York, ENRIQUITO ALSONDO, MICHAEL FARR, RALPH FEOLA, and HENRY ROSA, the defendants, did unlawfully, wilfully and knowingly forcibly assault, resist, oppose, impede, intimidate and interfere with agents of the Bureau of Narcotics and Dangerous Drugs, persons designated in Section 1114 of Title 18, United States Code, while they were engaged in and on account of the performance of their official duties, and during the commission thereof defendant ALSONDO did use a deadly weapon, to wit a Pietro Beretta handgun.

(Title 18, United States Code, Sections 2, 111 and 1114.)

THIRD COUNT

The Grand Jury further charges:

On or about the 31st day of August, 1972, in the Southern District of New York, ENRIQUITO ALSONDO, the defendant, did unlawfully, wilfully and knowingly carry a firearm, to wit, a Pietro Beretta handgun, during the commission of the felonies charged in the First and Second Counts of this Indictment.

(Title 18, United States Code, Section 924(c)(2).)

/s/ Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, JR.
United States Attorney

/s/ Howard V. Coughlin
Foreman

SELECTIONS FOR THE TRIAL TRANSCRIPT

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DIRECT EXAMINATION OF JEFFREY R. HALL

[17] BY MR. ROHRER:

Q Mr. Hall, by whom are you employed?
A I am a special agent, U. S. Department of Justice, Bureau of Narcotics and Dangerous Drugs.
Q How long have you been an agent?
A Approximately five years.
Q And you were an agent in August and September of 1972, is that correct?
A Yes, sir.
Q Do you know a person named Michael Farr?
A Yes, I do.
Q Do you see him in the courtroom?
[18] MR. KRIEGER: I concede, your Honor. Mr. Farr is seated in back of me.
THE COURT: All right, it is conceded the witness knows him.
MR. ROHRER: And did identify him in court.
THE COURT: Is that the concession?
MR. KRIEGER: Yes.
Q When did you first meet Michael Farr?
A I first met him on August 21 of this year—of 1972, excuse me.
Q We will all be confused with that I am sure, for a few days.
Where did you meet him?
A I met him at an apartment on Second Avenue and 50th Street in New York City.
Q Was anyone with you?
A Yes, sir.
Q Who was that?
A I was introduced to him by an informant.
Q What happened when you met him?
A I had a conversation with him regarding a drug transaction.

Q Can you tell us in as much detail as you can recall what he said to you and what you said to him during that [19] conversation?
A Yes.
MR. STONE: Your Honor, would you give the jury a precautionary instruction as to the hearsay aspect at the present time?
THE COURT: Yes, this testimony at the present time is being received only with respect to such person as you may find present at the time of the conversation. It's possible that later on, depending on how the proof develops, that the government may be able to connect this testimony with one or more of the other defendants. I will instruct you in detail with respect to a conspiracy charge as to when and under what conditions and for what purpose you may accept evidence of the statements or actions of one person whom you may consider to be a conspirator as the statements or actions of another such person.
Q Agent Hall, do you have the question in mind or would you like to have it read back?
A No, I remember the question.
Q Okay.
A I was introduced to Farr as a man interested in purchasing large quantities of heroin. And I discussed the transaction with him. I told him I was interested in buying a kilo of heroin, and he said that he could supply a kilo [20] for thirty thousand dollars. He told me that his connection was an Italian named Ralph Feola, who lived in White Plains, New York. And he also told me some other things about Mr. Feola.
MR. KRIEGER: I move to strike that last.
MR. BELLANTONI: Yes.
THE COURT: Yes, I will strike it out.
Q Was anything else said at this discussion that you can recall?
A Yes. There was other things said at the discussion.
Q How was it left after this first meeting with Michael Farr?
MR. KRIEGER: Objected to. That calls for a conclusion, your Honor.

THE COURT: Yes, it does, it is objectionable as to form, Mr. Rohrer.

Q Did you meet Michael Farr again?

A Yes, I did.

Q When was the second time you met him?

A The second time I met with him was on August 31, 1972.

Q Where did that meeting take place?

A I met him in front of the same apartment, 50th Street and Second Avenue, in Manhattan.

[21] Q Now, was any one with you when you went to meet him?

A Yes, sir.

Q Who was that?

A Agent Lightcap.

Q Anyone else?

A There were agents conducting surveillance at that meeting.

Q Was the informant there?

A Yes, sir, the informant was also there.

Q Was anyone with Mr. Farr?

A Yes.

Q Who?

A A man introduced to me as Henry, who I later identified as Henry Rosa.

Q Do you see Henry Rosa in the courtroom?

A Yes, I do.

Q Would you point him out?

MR. STONE: It's stipulated he has identified the defendant Rosa.

THE COURT: Well, that's very well and good. I sometimes think it's better for the witness to make the identification.

Q Do you see him here, Agent Hall?

A Yes, I do.

[22] Q Would you point him out?

A He is sitting at the table with the blue tie and gray suit on.

Q Now, what happened at this meeting?

A Mr. Rosa and Mr. Farr were standing in front of the apartment when we arrived, and we got out of our

car, and we joined them in Mr. Farr's car, which was a 1972 Chevrolet. Agent Lightcap and myself got in the back seat and Farr and Rosa got in the front seat of the car. They told us—

Q Try and specify who told you what, rather than they told us, if you can recall.

A Well, Farr introduced Rosa to us as Mr. Henry or Henry, and Rosa told us that they had a half-kilo of pure heroin to sell us, and that the price would be seventeen thousand dollars, and asked to see the money, and I did have a seventeen thousand dollar flashroll in my possession, in a brown paper bag, which I opened up and showed to him.

Q Before you go any further, will you tell us what a flashroll is?

A Yes, a flashroll is government, official government money that we have, and that we use when we are going to make a purchase, not to spend, but just to show so that the person thinks that we have the money. And thinks that we are going to spend the money.

[23] Q I'm sorry I interrupted you. After you showed him this flashroll, what happened then?

A Yes, then, Rosa said that the transaction would take place over at an apartment on the West Side, and said that we should drive over right then in this car, and I told him, well, we had our own car and we would follow, we would follow them over. Then, Rosa said, well, I'll go get in your car with you, and I'll direct you over to the apartment.

So, Rosa, Agent Lightcap and myself went and got in the car that we drove there, which is a government car, but an unmarked car, and the informant also got in the car with us, and then Rosa directed us to 155 West 68th Street in Manhattan.

Q Did Farr go any place after your meeting with him?

A Yes, Farr followed us. I believe he followed us in his car.

Q Now, what happened when you got to 155 West 68th Street?

A Rosa told us to drive into the garage, which is underneath the building, which we do, and then Farr followed us into the garage.

Q On the way over, did Rosa say anything to you?

A Yes, he did. I asked Rosa again, I asked him if the heroin was pure, and he said that—he called him the big man, [24] always sells pure heroin and he said that we were going to get to meet the big man, and he said he was mainly a body guard to make sure that nothing went wrong, to make sure that we had the money and that there were no guns involved.

MR. KRIEGER: May I respectfully request the Court to give the same precautionary instruction as heretofore with respect to this conversation on behalf of Farr?

THE COURT: I will take the testimony subject to connection as to anybody shown not to be present.

Q This was said in Farr's presence as you were driving there?

A No.

Q Getting back to your arrival at 155 West 68th, did Farr say anything to you there or Rosa say anything to you there after you arrived?

A Yes.

Q What did he say?

A Well, first of all, when we arrived, I had left my gun in the glove compartment, and I had no way to get the gun with Rosa in the car.

MR. KRIEGER: I object, non-responsive, your Honor.

THE COURT: I suppose it's non-responsive. You can frame a new question.

Q Let me put it this way. What happened when you got [25] there, and you can tell us the events.

THE COURT: You can ask him where the gun was, if you like.

A I had left my gun in the glove compartment, and I had no way of getting to it in front of Rosa, so after the attendant took possession of the car—

Q Was there a parking lot?

A It was an underground garage.

Q All right, go on.

A And I left the bag of money under the front seat, and when I got out of the car, Rosa said to me, you left the money under the front seat, I said I know, wait until the man parks the car, then I'll get the money. And the attendant parked the car, and I went to the car and got my gun out and I also got the money, and then I joined Agent Lightcap and Rosa and Farr and the informant, who were standing over near the pay window, where you pay at the garage.

Q Was anything said at that time?

A Yes. Farr told me that—he said you're going to be very satisfied and you're finally going to get to meet Ralph.

Q What happened next?

A Then, we went up, we climbed the stairs to the lobby of the apartment, and we took an elevator to the fourth floor and we went to room, I think it was 405.

[26] Q What happened when you got to the apartment?

A Rosa knocked on the door and, about a minute later, the door was opened by Alsondo.

Q Do you know the full name of Alsondo?

A Yes, Enriquito Alsondo.

Q Do you see him in the courtroom?

A Yes, I do.

Q Where is he?

A He just raised his hand. He is wearing a dark suit, red tie and sun glasses.

Q Standing right next to me?

A Yes.

THE COURT: Seated next to you.

MR. ROHRER: Excuse me, seated right next to me.

Q What happened?

A We all walked into the apartment, that is, Agent Lightcap, Rosa, Farr and the informant, and when we got into the apartment, Alsondo motioned into the room, as if to say, go into the room. And I asked Alsondo how many people were in the apartment, and he didn't respond to the question, he just said the stuff is in the bedroom. And I told him that I wasn't going to go into the bedroom, and he got irritated and the informant then

walked into the bedroom and came right back out and said everything is all right.

[27] Q Was there—did I interrupt you?

A Excuse me?

Q Had you finished your answer?

A Not quite, no.

Q Okay, excuse me. Sorry to interrupt.

A He came out and said everything was all right, that the drugs were in fact in the bedroom. Now, before the informant went into the bedroom, I heard Alsondo say, the old man is in the bedroom, and shortly after he said this, or while he was saying this, Rosa walked into the bedroom, then came right back out and asked Alsondo, where is the old man? And then this is when the informant went into the bedroom and came back out and said the stuff is there, everything is all right. At this point, I gave the bag containing the money to Agent Lightcap and I told him to stay out in the living room area, and then everybody walked into the bedroom, myself, Alsondo, Rosa, Farr and the informant, walked into the bedroom.

When I got into the bedroom, I saw on the bed a brown attache case which was opened and there were bags of white powder sitting in the attache case.

MR. ROHRER: May this be marked as Government's Exhibit 1 for identification, please.

(Government's Exhibit 1 marked for identification.)

[28] MR. ROHRER: And this box as Government's Exhibit 2 for identification.

(Government's Exhibit 2 marked for identification.)

Q I show you Government's Exhibit 1 for identification. Can you identify that, Agent Hall?

A Yes, sir I can.

Q What is it?

A This is the attache case that was sitting on the bed.

MR. ROHRER: The government offers Exhibit 1, your Honor.

THE COURT: Received in evidence.

(Government's Exhibit 1 received in evidence.)

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[31] BY MR. ROHRER:

Q Agent Hall, when Alsondo pointed out the packages to you in the brief case, which is in evidence as Government's Exhibit 1, where were Farr, Rosa and the informant?

A To the best of my knowledge, they were in the bedroom around the bed.

Q All right. After Alsondo indicated that this was the stuff, what happened?

A Well, I told him that everything looked okay, and when I said that, Rosa and Farr walked out of the bedroom.

Q Where did they go?

A I don't know. I just know that they walked out of the bedroom.

Q Was there one corridor leaving the bedroom?

A There is one corridor—walked out the bedroom leading into the hallway, a hallway which connects the rest of the house.

Q What about Alsondo.

A Alsondo stayed there for a few seconds. He stayed [32] there by the bed. When I said everything looks all right, and after about, after a few seconds, he also turned around and walked out of the bedroom.

Q What, if anything, did you do after he walked out of the bedroom?

A Well, before he actually got out of the bedroom, he was walking out of the bedroom, I opened up a closet door that was right near the bed, and I saw a man in the bedroom, in the closet. He was tied and gagged on the floor. And when I saw this, I realized that—

MR. KRIEGER: Objected to.

THE COURT: Yes, you can't testify as to what you realized, only what you saw or did, or what was done in your presence.

A Okay. When I saw the man tied and gagged, I drew my weapon and I came out of the bedroom and I was coming out of the bedroom, I saw Alsondo's back walking about mid-way—he was mid-way between the bedroom and the end of the hallway, and at the end of the hallway, was Agent Lightcap holding the brown paper bag.

Q Was Lightcap facing you?

A Yes, he was.

Q Facing Alsondo also?

A Yes.

[33] Q Where was Alsondo when you opened the closet door, on his way out of the bedroom?

A He was almost out of the bedroom, he had his back to me and was almost out of the bedroom.

Q What happened next?

A When I came out of the bedroom, Alsondo was reaching in the back—in his back, in his waistband at the middle of his back, and I saw him pulling a gun from his waistband. I yelled at Agent Lightcap that he had a gun. I came up behind him, I come up behind Alsondo, I had my gun drawn, I grabbed his arm, I yelled federal agents, and Agent Lightcap and I had to fight Alsondo, we got him down on the ground, I took the gun away from him, and Lightcap ran into the living room.

Q What kind of a top garment was Alsondo wearing, if any, a jacket, sweater, shirt?

A Wearing a sweater, a cardigan sweater, I believe.

MR. ROHRER: May this be marked as Government's Exhibit 3 for identification.

(Government's Exhibit 3 marked for identification.)

Q Agent Hall, I show you Government's Exhibit 3 for identification. Would you look at that and identify it, if you can, please?

A Yes, sir. This is the gun that Alsondo had.

[34] Q How can you tell that?

A I have my initials on it. I have my initials on here.

Q On the butt?

A Yes.

MR. ROHRER: Government offers Exhibit 3, your Honor.

MR. LENEFSKY: Objected to on behalf of Alsondo as irrelevant, incompetent, immaterial and not connected with the commission of a crime.

MR. KRIEGER: Objected to on behalf of the defendant Farr. No causal relationship whatsoever.

MR. STONE: I will join in objecting on behalf of the defendant Rosa. There is no proof in this case that Rosa knew Alsondo had a gun.

MR. BELLANTONI: I join in that objection. In fact, he hasn't been connected at all at this point.

THE COURT: I will overrule the objection of behalf of defendant Alsondo.

As to the other defendants, it will be received subject to connection and you will have a reserved motion to strike it at the end of the case.

(Government's Exhibit 3 received in evidence.)

Q Agent Hall, on one side of the gun there is a lever,

[35] do you see that?

A Yes, sir.

Q Are you trained in the use of handguns?

A Yes, sir.

Q What is that lever for?

A It's a safety.

Q What is its function?

A When the safety is on, the gun can't be fired, and when the safety is off, the gun can be fired.

Q In what position was the safety lever at the time you seized the gun from defendant Alsondo?

A The safety was off.

Q In other words, the gun was in a firing condition?

A Yes, sir, and there was a bullet in the chamber.

Q Could you put the lever in the safety-off position?

A This is how the gun was when I got it from him (indicating.)

MR. ROHRER: May I walk past the jury showing them this?

THE COURT: Has it been established that the gun is presently not loaded? Let the witness establish it by pulling back the barrel.

MR. STONE: I would appreciate that.

MR. ROHRER: I think the safety should remain on.

[36] THE COURT: You may elicit of testimony after the defendant has examined the firearm.

MR. ROHRER: I don't intend to pass it to the jury, your Honor, just to display it.

THE COURT: All right, then you may take it back.

MR. ROHRER: I will just hold it down.

Q Agent Hall, you testified there was a bullet in the chamber. Was this clip that is taped outside—where was that?

A The clip was in the gun.

Q Let me make sure I am right. The safety is on now, is that right?

A Yes, sir, the safety is on now.

Q You said Agent Lightcap ran into the living room. Did you see what happened in the living room as he went in there?

A I didn't see most of what happened, no.

Q Did you see any of what happned?

MR. KRIEGER: Objected to, the answer is improper. I didn't see most of what happened.

Q Well, what, if anything, did you see in the living room?

A I saw Agent Litghtcap run toward the door, I saw him run toward the living room and make a right hand turn which would be toward the front door. And that's about all I saw.

[37] Q Did you eventually go into the living room yourself?

A Yes, I did.

Q What did you do with defendant Alsondo?

A I handcuffed him and he was on the floor, face down, in the hallway.

Q And what happened when you went into the living room?

A Rosa and Farr were also in custody. Agent Lightcap. Farr was in the dining room. I think they were both in the dining room area, lying face down.

Q Do you know whether or not they were both conscious?

A Yes, they were both conscious.

Q How about Alsondo?

A Yes, he was.

Q Did there come a time when other agents came up to the apartment?

A Yes, sir.

Q What happened when they came up to the apartment?

A They conducted a search of the apartment, and Agent Wilson found—

MR. BELLANTONI: I object to what Agent Wilson found, your Honor.

THE COURT: Unless it was in his presence.

Q Did you see him?

[38] A Yes.

THE COURT: Overruled.

Q What did you see?

A I saw him open up the closet door and pull Feola out of the closet.

Q Do you see the person he pulled out of the closet in the courtroom?

A Yes, I do.

Q Could you point him out?

A He is sitting with the light plaid suit on and blue tie, he has his hand on his face, with the mustache.

MR. ROHRER: May the record identify he identified the defendant Ralph Feola, your Honor.

THE COURT: Yes.

Q Did there come a time when you learned whose apartment that was?

A Yes, sir.

Q Whose was it?

A It was the man who was tied up in the closet, in the bedroom closet.

Q What was his name?

A His name was Nilo Tanderone.

Q He was the man you saw tied in the bedroom closet, tied and gagged?
[39] A Yes, sir.

* * * *

[47] HALL—CROSS

Q Now, when you got into the door, you were in back, Alsondo's back was toward you, right?
A Yes.
Q And, then you say you saw a gun. Did you actually see a gun?
A Yes, I did.
Q Did you see it drawn by Alsondo?
A I saw it half drawn.
Q Half drawn. The other half?
A When I first saw the gun, it was half drawn.
Q Was the other half in his waistband?
A To the best of my recollection, the tip of the gun was still in his waistband.

* * * *

[146] MR. ROHRER: Your Honor, the government has discussed with counsel a stipulation concerning these exhibits and with your permission, I would like to read it into the record now.
MR. STONE: No objection, your Honor.
[147] THE COURT: Is this a written stipulation?
MR. ROHRER: No, it's an oral one, just to read into the record.
THE COURT: You may read it and see if they so stipulate it.
MR. ROHRER: "If Michael D. Sougros, a U. S. chemist, were called to testify at this trial, he would testify that the substance in Government's Exhibits 2-C, 2-D, 2-E and 2-F is sucrose, which is a form of sugar, having a net weight of approximately two thousand twenty-seven point five grams."
The government offers with that stipulation, Government's Exhibits 2-C, through 2-F.

THE COURT: Do each of you so stipulate, gentlemen?
MR. LENEFSKY: So stipulated.
MR. STONE: So stipulated.
MR. KRIEGER: Yes, sir.
MR. BELLANTONI: Yes, sir.
THE COURT: It will be received in evidence.

(Government's Exhibits 2-C, 2-D, 2-E, 2-F received in evidence.)

* * * *

[170] DIRECT EXAMINATION OF
IRVIN LIGHTCAP

BY MR. ROHRER:

Q Mr. Lightcap, are you a special agent with the Bureau of Narcotics and Dangerous Drugs?
A Yes, sir, I am.
Q How long have you been an agent?
A Approximately two years.
Q And you were an agent on August 31, 1972, is that correct?
A Yes, sir, I was.
Q On that day, were you with Special Agent Jeffrey Hall from the Bureau of Narcotics?
[171] A Yes, sir.
Q What did you do?
A I was operating in an undercover capacity with Agent Hall. We went to the vicinity of East 50th Street and Second Avenue in New York City.
Q Did you meet anyone there?
A Yes, sir, we did.
Q Who did you meet there?
A We met defendant Farr, an informant, and defendant Rosa.
Q You stated the name Farr. Do you know the first name of that person?
A I believe his name is Michael Farr.
Q Do you see him in the courtroom?
A Yes, sir, I do.

MR. KRIEGER: Conceded, my client is seated in back of me, Mr. Farr.

A Yes, sir.

Q Do you know this Rosa's first name?

A Yes, his name is Henry Rosa.

Q Do you see him in the courtroom?

A Yes, sir, he is seated behind Mr. Stone.

MR. STONE: Identity is conceded, your Honor.

Q Now, what happened at this meeting?

[172] A Agent Hall and myself parked the vehicle. We engaged in conversation with Mr. Rosa and Mr. Farr.

Q Can you relate, stating as you do so, who said what?

A Yes, sir. We were motioned by Mr. Rosa to enter Farr's vehicle, I believe it was a late model Chevrolet which was parked in front of the government vehicle. Agent Hall and myself entered the rear seat, defendant Farr and defendant Rosa entered the front seat.

Q Was there a discussion in the car?

A Yes, sir, there was. Defendant Farr informed Agent Hall that his people had approximately a half-kilogram of pure heroin to sell to Agent Hall and that they wanted seventeen thousand for it.

Q What else was said, if anything?

A Defendant Farr recalled Agent Hall that he had been up in an apartment on the West Side of Manhattan earlier in the day, had observed the heroin in question and a large quantity of cocaine and marijuana.

Q Did Rosa say anything?

A Defendant Rosa was introduced by Farr to Agent Hall and myself as Henry.

Q Beg your pardon, as what?

A Farr introduced defendant Rosa to myself and Agent Hall as Henry. Defendant Rosa appeared very impatient, and [173] I recall him mentioning something about his people didn't like to be kept waiting, at that time he requested to see the money, Agent Hall displayed a seventeen thousand dollar flashroll, defendant Rosa, I believe Defendant Rosa counted the money, said that everything seemed to be in order.

Q Who said that?

A Defendant Rosa.

Q Did he say anything else?

A Just that—no, at that time, I think he said that he wanted to go up to the apartment, that the deal would take place in an apartment on the upper West Side.

Q What did the people in the car do then?

A At that time, defendant Rosa, myself, and Agent Hall exited Mr. Farr's vehicle, and we entered the government vehicle, along with the informant.

Q Where did you go?

A We went to an apartment located, I believe, at 155 West 68th Street.

Q Were you directed there by anyone?

A Defendant Rosa instructed Agent Hall how to proceed to the vicinity of the apartment.

Q Was anything said in the car while you were traveling there?

A Yes. To the best of my recollection, immediately [174] after getting in the car, defendant Rosa I noted had been looking at me, when we were on the street prior to getting in the car, after we got in the car, defendant Rosa got in the back with me, and Agent Hall and the informant were in the front seat. Defendant Rosa mentioned to me if I had a gun, he says, I thought I saw a gun on you.

MR. KRIEGER: If your Honor please, may I respectfully request an admonition to the jury that the defendant Farr, not being present at any conversation which is alleged to have taken place without his presence is taken subject to connection, if any.

MR. LENEFSKY: Yes, we make the same application on behalf of Alsondo.

THE COURT: Yes, I mentioned this to you before, and I will comment on it in detail at the conclusion of the case when I give you my instructions as to the law, but unless and until there is proof satisfactory to you, independent evidence of the existence of the conspiracy, then unless and until that is the state of the case, you can't consider as evidence against a non-present defendant anything which any of the other defendants said or did

or anything which was said or done in their presence but not in the presence of the absent defendant. That evidence is presently being taken subject to connection.
[175] All right.
Q Do you recall where you were?
A Yes, sir, at the part where Mr. Rosa asked me if I had a gun, I told him no, that I do not have a gun. I recall his words were that we were going to meet the big man, that he was the man's bodyguard, and that his purpose was to make sure the money was in order and that there were no guns.
Q You are saying that he, Rosa, was the man's bodyguard?
A Yes.
Q And what his purpose was.
Did you in fact have a gun?
A Yes, sir, I did.
Q Where was it?
A It was on the left side in my waistband.
Q Did you state that Farr traveled to the apartment?
A Yes, sir, Farr stayed in his vehicle and he followed us, I periodically looked back and saw him in his vehicle following us.
Q What happened when you got to 155 West 68th Street?
A Mr. Rosa instructed Agent Hall to pull the government vehicle in an underground parking lot and park, and shortly after we arrived, Mr. Farr arrived behind us and we all parked our vehicles and exited the vehicles.
[176] Q What happened when you exited the vehicle?
A Mr. Farr joined us, Agent Hall and—oh yes, Agent Hall asked Farr if everything was all right. I explicitly remember Mr. Farr telling Agent Hall, you're finally going to get to meet Ralph.
MR. BELLANTONI: Your Honor, I object to this at this time.
THE COURT: I will take it subject to connection the same as I previously ruled.
Q Go on.
A And all four, we all proceeded to Apartment 405 on the fourth floor of the building.

Q What happened when you got to 405?
A Mr. Rosa knocked on the door, a short while later, we were admitted into the apartment by Mr. Alsondo.
Q You are pointing to someone here in the courtroom?
A That's the gentleman next to you, with the red tie and the sunglasses.
MR. LENEFSKY: Indicating Alsondo.
Q He's the person who opened the door and let you in?
A That's right.
Q What happened after you got into the apartment?
A I remember Agent Hall asking Mr. Alsondo how many people were in the apartment, and I remember something about [177] Mr. Alsondo saying to Mr. Rosa, I believe, the old man is in the bedroom, and the stuff is in the bedroom, and everything is okay.
Q Have you worked in an undercover capacity on a number of occasions?
A Yes, quite a few.
Q What did the word "stuff" mean to you?
A I took it to mean the heroin that we were going there to seize.
Q All right. What happened after these events then?
A Mr. Rosa and the informant proceeded into a bedroom of the apartment.
Q Did they come back or did they stay there?
A And the informant returned momentarily after he had entered, said in fact the narcotics were in the bedroom.
Q Did any one go into the bedroom after that?
A At that time, Agent Hall was in possession of the seventeen thousand dollar flashroll, he took the flashroll and he handed it to me, and along with Mr. Alsondo, Mr. Farr and the informant, they re-entered, they all went into the bedroom again.
Q Did anyone come out of the bedroom, after that?
A Moments later, defendant Rosa and defendant Farr came out of the bedroom and went into the kitchen area [178] located on the right hand side of the apartment.

Q Agent Lightcap, when you mentioned the people that went into the bedroom, I don't think you mentioned Rosa but you have him coming out. Did he go in there?

A He went in there with the informant originally and he never came out, the informant came out, and told us that the narcotics were in the bedroom, Mr. Rosa remained in the bedroom.

Q I see. I'm sorry. I misunderstood you. So, it's clear, then, Farr and—

A Then Agent Hall, Farr and Mr. Alsondo proceeded into the bedroom.

Q All right, now, did anyone come out from the bedroom after that?

A Yes, sir, Mr. Rosa and Mr. Farr came out of the bedroom and went into the kitchen area.

Q What did you observe next?

A A few seconds passed by. I walked into the hallway leading into the bedroom.

Q Did you actually enter the hallway?

A Yes, sir, I had entered the hallway.

Q Where was the flashroll at that point in time?

A At that time, I had the flashroll in my possession.

Q Was it in a paper bag?

[179] A It was in a paper bag, I believe I was holding it in my left hand.

Q What did you see?

A I had just entered the hallway when I observed Mr. Alsondo walking down the hallway towards me.

Q Did he do anything?

A At this time, he had his right arm and he was reaching, slowly reaching behind his back. A second after that, he went, he put his hand behind his back, I observed Agent Hall with his weapon drawn standing in the doorway of the bedroom, Agent Hall yelled to me something to the effect that he had a gun, watch it, he has a gun, I believe were his words, and he came after defendant Alsondo from behind with his weapon drawn. And I believe he placed the weapon towards Mr. Alsondo's head, he yelled, "federal agents, you're under arrest," at that time I rushed forward, I dropped the flashroll, I rushed forward and we subdued Mr. Alsondo.

Q Did Agent Hall do anything with his left hand as he came up to Alsondo?

A I couldn't—I believe he grabbed Alsondo's arm because I never observed the defendant's arm coming back out. When I rushed toward the defendant Alsondo, his right arm was maintained behind his back. I saw Agent Hall's right hand, I never saw Agent Hall's left hand.

[180] Q At what point did he shout, federal agents, you're under arrest?

A Just as he had—was within a foot of him, I believe. It was almost right next to him when he yelled, federal agents, and at this time Alsondo turned to the right and then a struggle ensued.

Q Would you describe how he was subdued and what the struggle was like, what happened during it?

A Alsondo had a left hand free at this time, he swung toward me, he saw me coming, I hit the defendant, I would say twice, as hard as I possibly could, I was right on top of him, I grabbed him by the hair, defendant Alsondo, Agent Hall and myself went to the floor, we fell backwards, I fell on top of Alsondo, at this time I had hold of his head, crashed, it was a linoleum floor, crashed to the floor, at that time for a split second, I saw Agent Hall in possession of another revolver in his left hand. At that time I rushed into the other room and effected the arrest of defendant Rosa.

Q Can you describe that weapon you saw just for that brief instant in Agent Hall's hand?

A I remember it as a black automatic.

Q Let me show you Government's Exhibit 3 in evidence. Can you identify that?

A Yes, sir. This is the weapon that was seized off [181] Mr. Alsondo.

Q Now, you said that you rushed back into the living room. Can you describe in as much detail as you can recall what happened from the instant you got up from subduing Alsondo.

A Well, I realized there were still two defendants in the front room, I was afraid—

MR. KRIEGER: Objected to, your Honor.

THE COURT: Yes, it calls for the operation of his mind. You may reframe it.

Q Just what you did.

A As I was rushing down the hall, I observed defendant Rosa coming towards me. I grabbed him and yelled, "Federal Agents", at which time Defendant Rosa, I believe, with his right hand pushed me away, started heading for the door at which time I grabbed him again and hit him, he went back against the hall, at this time I had my revolver drawn, I placed him under arrest and used him as a shield to walk towards the kitchen area where defendant Farr was crouched in a corner with his hands over his head.

Q What did you do next?

A I informed Mr. Farr that he was under arrest, I threw Mr. Rosa to the floor, face down, and I instructed Mr. Farr to lay down next to him, put his hands over his head. [182] As this time, I conducted a search for any more weapons.

Q Did you handcuff either of these individuals?

A No, sir, I did not.

Q What happened after you conducted a search of these two people?

A Agent Hall informed—instructed the informant to summon the surveillance agents for assistance. At that time, I stayed in the room with defendant Rosa and defendant Farr, while they were laying on the floor. Shortly after the informant left, the surveillance agents came into the apartment.

Q Let me go back just a step. Back to the point where you testified that you saw Alsondo coming down the hall, moving his right hand behind him.

What did Agent Hall shout about that point?

A "Watch out, he has a gun."

Q Can you state your reaction to that statement?

MR. LENEFSKY: Objected to.

THE COURT: Sustained.

MR. ROHRER: Your Honor, may we approach the side bar for a brief moment.

THE COURT: Yes.

(At the side bar.)

THE COURT: You see, I ruled based on the form of [183] the question. If the question was intended to elucidate what did he do, but that's his reaction, isn't it. My reaction was I drew my gun.

MR. ROHRER: Your Honor, an essential element of the government's case when you are talking about assault is putting someone in fear of receiving a battery. I think that's the classic definition and the one that's in our request to charge.

THE COURT: Isn't that judged objectively, not subjectively?

MR. ROHRER: Well, the government believes that this agent's feeling that he was going to be shot was very significant when the jury considers whether or not he was placed in fear of receiving a battery.

THE COURT: Do the rest of you want to be heard?

MR. KRIEGER: No, sir. I think you might be able to elucidate his state of mind, but the present question is bad as to form.

(In open court.)

Q What was your state of mind at the time of these events we are just talking about?

MR. LENEFSKY: Objected to.

THE COURT: Well, now, I will permit the witness to be asked whether he believed the statement said to have been [184] made to him by Mr. Hall, did he have any reason to believe it wasn't true or correct.

MR. ROHRER: Thank you, your Honor.

Q Did you believe Agent Hall's statement that this person had a gun?

A Yes, sir. I did.

Q Now, coming back to where we were, you stated that you searched Rosa and Farr, is that correct?

A Yes, sir.

Q What happened after that?

A I stayed with the defendants, kept them laying on the floor, my weapon drawn, the surveillance agents came in, I believe they removed the other defendant, Mr. Tanderone from the bedroom, the closet where he was

tied and gagged, and they conducted a search of the apartment.

Q Do you know whether or not they found anything in conducting that search?

A While they were conducting the search, well, Agent Wilson, I believe, was conducting a search of the hallway area and the closet, he came across Mr. Feola who was hiding in a closet.

MR. BELLANTONI: I object to the characterization of hiding, your Honor.

THE COURT: Well, that's a question the jury will [185] have to infer from the evidence. He may describe what he found in the closet or who he found in the closet.

Q You pointed to someone when you said Agent Wilson found Mr. Feola in the closet. Were you present when Agent Wilson found Mr. Feola?

A Yes, sir, I was.

Q Could you indicate for us specifically who you pointed to?

A Mr. Feola is the gentleman with the brown tie and mustache.

Q At the far end of the table from me?

A Yes, sir.

Q Did he have a mustache on that day?

A No.

Q Where were you sitting in relation to the closet where Mr. Feola was found?

A Prior to his being discovered there, my back was to the closet at all times.

THE COURT: When you opened the closet, was he standing or was he seated?

A I turned when Agent Wilson opened the closet and I observed Agent Wilson remove Mr. Feola from the closet. I couldn't see whether he was standing or crouched.

THE COURT: How big a closet was it?

[186] A I guess you would call it a regular size closet, had suitcases in it—almost like a small walk-in closet.

Q After Mr. Feola's arrest, did you obtain anything from him, any papers of any kind?

A Yes, sir, we seized personal papers, you know, valuables, jewelry, things of that sort, telephone books.

Q Did he have more than one telephone book?

A I don't recall exactly having more than one.

Q He had at least one?

A Yes, sir.

Q What did you do with that phone book?

A Mr. Feola came to the office—I don't recall the exact date—he requested that we return his personal property to him and at that time I made copies of Mr. Feola's phone book, and I returned the original phone book and what other personal property he had to Mr. Feola.

Q Let me show you Government's Exhibit 4 for identification. Would you examine it and see if you can identify it?

A Yes, sir, these are the xerox copies of Mr. Feola's phone book.

* * * *

[309] DIRECT EXAMINATION OF FRANKLIN VELIE

BY MR. ROHRER:

Q Mr. Velie, do you know a person named Ralph Feola?

A Yes.

Q Do you see him in the courtroom?

A Yes, he's at the end of defense counsel table, red sport coat, hand to face.

MR. ROHRER: May the record reflect that Mr. Velie has identified Mr. Feola.

Q When was the first time you saw him?

A Early September of 1972 in my office in this building on the third floor.

* * * *

[312] Q Did you discuss and ask questions concerning the charges which you told him were being brought against him?

A Yes, I did.

Q In connection with that latter point, that is, the charges being brought against him, can you recall the questions you asked and his responses, putting aside the pedigree and [313] background information?

A I think I asked him what happened last night or something like that, to get his version of the facts underlying his arrest, and I recall that he said—he denied he had anything to do with any sale of narcotic drugs. He said, "I had nothing to do with narcotic drugs," and he said that "the stuff you seized is sugar." He said that he was present in the apartment where the arrest had taken place, a priest's apartment, but that he had heard a loud noise, a commotion of some kind and had hidden in a closet and I asked him if he knew any of the other people who had been arrested with him, Michael Farr, Henry Rosa, Enriquito Alsondo or the priest, Mr. Tanderone, and he said he never saw those people before. He didn't know them.

Q You actually mentioned these people by name?

A Yes, I think I had the draft complaint in front of me and I was reading from the box caption.

Q Do you see any of those other people in the courtroom?

A Yes, Mr. Alsondo is sitting—

MR. LENEFSKY: Indicating Mr. Alsondo.

Q And Mr. Rosa?

A Mr. Rosa is wearing a grey suit and has a blue tie.

MR. ROHRER: Indicating the defendant Rosa.

[314] A Michael Farr has a red tie, blue suit, long hair.

Q As you asked this, do you know where these other people were physically?

A All of them, except for Mr. Alsondo, were out in the anteroom, and I indicated that, "I mean the people sitting outside, sitting with you a moment ago."

Q And his answer was he had never seen these people before?

A Yes.

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[328] DIRECT EXAMINATION OF CATHERINE HALL

BY MR. ROHRER:

Q Miss or Mrs.?

A Mrs.

Q Mrs. Hall, by whom are you employed?

A The Wyndham Hotel, Five Hudson Street, Yonkers, New York.

Q How long have you been employed there?

A Three years.

Q So you were employed there all during 1972?

A Yes.

Q Do you know a person named Alsondo?

A Yes.

Q,Do you see him in the courtroom?

A Yes.

[329] Q Would you point him out?

A Right there.

Q The person sitting next to me?

A Yes.

MR. ROHRER: May the record reflect she has identified Mr. Alsondo?

THE COURT: Yes.

Q What do you know his first name as?

A Tito.

Q Do you know him by any other first name?

A No.

Q How do you know Mr. Alsondo?

A He was a resident of the hotel.

Q Was he a resident there during the summer of 1972?

A Yes, he was.

Q Do you recall the last date he was a resident?

A The last day he appeared in the hotel was August 29, I think.

Q 1972?

A Yes.

Q Let me show you Government's Exhibit 4 in evidence, and ask you to look at the phone number under the name Tito.

Before you do that, this is on the fourth page, although they are not numbered. Do you see that?

[330] A Yes. 969-4967.

Q Do you recognize that number?

A Yes, it's the Hotel Wyndham's number.

Q That was the number of the hotel all during '72?

A Yes.

Q During the summer of '72?

A Yes.

Q Would you look at another name here under that number and the name is Tanderone, with a number there?

A Yes.

Q Do you see that number?

A Yes.

Q What is the number?

A It looks familiar—

MR. BELLANTONI: I object to bringing in numbers through this witness.

THE COURT: He is asking her what she knows about the number. I will strike out the number that looks very familiar.

Q Do you recognize it, and if so, how?

A That is the number Tito gave me to give somebody else to call.

Q Can you read that number?

A 724-8357.

[331] Q You say that Tito gave you that number for somebody else to call. To whom were you to give this number?

A To a person called Ralphy.

THE COURT: I think we should have the time and place of this conversation.

MR. ROHRER: Of course.

Q Do you recall when Tito gave you the number and asked Ralphy to call?

A I would say it was in the spring, the first time.

Q The spring of 1972?

A Yes.

Q Did Tito say anything else about the number of Ralphy?

A No, to give him that number if he called quite a few times, and after that I had another message to give him.

Q What was the other message?

A He would be at West 64th Street.

Q You are sure it was West 64th Street?

A I certainly do because that is all I put down.

Q West 64th?

A Right.

West 68th, I'm sorry.

Q Are you sure?

A Yes, now I am sure definitely.

[332] Q Was it more than one occasion on which Tito left this message for Ralphy?

A The message, continuously all summer long. He would be there at a certain time, and that was that.

MR. BELLANTONI: I have to object to this. Unless she specifies the dates—

THE COURT: Are you the desk clerk there?

THE WITNESS: Yes.

THE COURT: Did he leave these messages through you?

THE WITNESS: Yes, he called me and told me if Ralphy called to be at West 68th Street.

THE COURT: Would that be more than once during the summer?

THE WITNESS: Yes, that's how I remember.

THE COURT: I will allow it.

Q You said it happened all during the summer of '72?

A Yes.

Q This includes August of '72?

A Yes.

Q Did you ever have occasion to meet a person named Ralphy?

A Yes, I did. That was in November.

Q November of what year?

[333] A November '72.

Q Where did you meet him?

* * * *

A At the Wyndham Hotel.
Q What was the occasion for that meeting?
[334] A He came to pick up Mr. Alsondo's belongings. They were personal belongings.
Q Were there any phone calls from Ralphy that preceded this meeting?
A Yes, he called and said to check him out of his room and he would have somebody pack his belongings up, and he would take care of it and come down and pick his things up.
Q Who called?
A Ralphy.
Q Did he say anything about Tito?
A I asked how he was, and he said he was sick and he was upstate.
Q You say you met with Ralphy?
A That is the only time I met him.
Q Sometime in November?
A Yes.
Q You recognized his voice as the voice you heard over the telephone?
A Yes, I heard it so many times.
Q Do you see Ralphy in the courtroom?
A I think that is he, but he didn't have a mustache.
Q You are indicating a man farther away from me?
A Yes, and he didn't have dark hair then, his hair was lighter.
[335] Q Did he pick up Tito's belongings on that occasion?
A Partial, and he said he would be back for the rest and he wanted some mail, and I would not give him the mail unless I had a letter from Tito telling me to give him the mail.
Q Did he ever come back?
A No, he never came back.

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[341] DIRECT EXAMINATION OF CORNELIUS O'DONNELL

BY MR. ROHRER:

Q By whom are you employed?
A The New York Telephone Company.
Q How long have you been employed there?
A Seventeen years.
Q What is your job there?
A Security agent.
Q In your capacity as security agent, are you familiar with the records and record keeping practices of the telephone company?
A Yes I am.
MR. ROHRER: May this be marked as Government's Exhibit 5 for identification, it's two cards, a white one and an orange one.

(Government's Exhibit 5 marked for identification.)

Q Let me show you Government's Exhibit 4 in evidence. I show you the number under the name Tanderone. What is that number?
A 724-8357.
[342] Q I show you Government's Exhibit 5 for identification. Would you briefly describe what that is rather than telling us what is in it?
A These two cards here, one card is known as a service record card held by the commercial department in the course of business, and the other card is known as a credit card also held by the commercial department of the New York Telephone Company.
Q From those records—don't tell us what the answer is—from those records, can you tell who the subscriber is or was in 1972 for 724-8357?
A Yes, I can.
Q Are these records kept in the ordinary course of the phone company's business?
A Yes, they are.
Q Is it the ordinary course of the phone company's business to keep such records?

A Yes.
Q Are the entries made on those records made at or about the time of the event or transaction they record?
A Yes, sir.
MR. ROHRER: The government offers Exhibit 5, your Honor.
MR. LENEFSKY: No objection.
[343] MR. BELLANTONI: I have no objection.
THE COURT: Received.

(Government's Exhibit 5 received in evidence.)

THE COURT: Does that show the address of this telephone exchange?
MR. ROHRER: Yes, it does.
Q Putting Government's Exhibit 5 in evidence in front of you, first off, can you tell us who the subscriber is for that number and for what period of time?
A The service record card reflects that the listed name is Tanderone, and the first name is Oswaldo.
Q What about the address?
A 155 West 68th Street.
Q What is the apartment number?
A Located fourth floor, Apartment 405.
Q Was the service or the number at that address changed at any time, incidentally?
A Yes, the service record card reflects that the number of 724-8357 was changed to 595-8905 on 12-19-72.
MR. ROHRER: May I pass this to the jury?
THE COURT: Does it show when the service began at that name and that address?
Q Can you tell us from the record when the service began?
[344] A The credit card reflects that the telephone number 724-8357 was completed installation on 3-3-72, sir.
Q March 3, 1972, correct?
A Yes, sir.
MR. ROHRER: May I now pass it to the jury, your Honor?
THE COURT: Yes.

MR. ROHRER: May these be marked as Government's Exhibit 6 for identification, please.

(Government's Exhibit 6 marked for identification.)

Q Again, looking at Government's Exhibit 4 in evidence—
THE COURT: Perhaps you should wait until the jury has had a chance to look at the exhibit. You are asking them to do two things at once.
MR. ROHRER: Excuse me. I will just sit and wait, then.
THE COURT: You may resume, Mr. Rohrer.
Q I show you Government's Exhibit 6 for identification. Can you just tell us what those cards are?
A Four service record cards held by the commercial department, New York Telephone Company.
Q Let me show you Government's Exhibit 4 in evidence [345] again, page ten. If you look at the top line on your left, do you see the name Mike Farr?
A I do.
Q And you see the number next to that. What number is that?
A 967-1953.
Q Can you just state again from looking at Government's Exhibit 6 for identification, can you tell who the subscriber is for that particular number?
A Yes, I can.
Q Is that a record kept in the ordinary course of the telephone company's business?
A Yes, it is.
Q Is it the ordinary course of the phone company's business to keep such records?
A Yes, sir.
Q And are the entries made on those records made at or about the time of the event or transaction which is recorded?
A Yes, sir.
MR. ROHRER: The government offers Exhibit 6, your Honor.

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[347] (Government's Exhibit 6 received in evidence.)

THE COURT: You may continue, Mr. Rohrer.

Q Can you tell us from these records who the subscriber to 967-1953 was during the year 1972?

A This is a change of party in main listing reflected and it reflects that on July 24, the listing was changed—

THE COURT: What year?

THE WITNESS: July 24, 1972.

The listing was changed from the old listing, which [348] was prior to 24-7-72 under the name of Farr, J., and on the 24th of July, 1972, the listing was changed to a party by the name of Ritter, first name, Anthony, Jr. The address naturally remained the same, private house at Pleasant Ridge Road, Harrison, New York.

Q Did the service continue throughout '72? Let's put it this way: Was it in service in August and September of '72?

A Yes, I would say it was still in service.

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[350] MR. ROHRER: The government just has two brief stipulations which it would like to read into the record at this time.

THE COURT: All right.

MR. RORHER: First, it's stipulated and agreed by and between the government and counsel for Henry Rosa that when the pedigree statement, that is, the background statement, was taken from Mr. Rosa by an agent of the Bureau of Narcotics and Dangerous Drugs, Mr. Rosa freely and voluntarily gave his address as 155 West 68th Street, Apt. 405, New York, New York and his telephone number as 212-724-8357.

MR. STONE: So stipulated, your Honor. I have discussed this with Mr. Rosa and that is a true statement of fact.

THE COURT: During August of '72?

MR. STONE: During the time of the arrest, yes, your Honor.

MR. ROHRER: It's stipulated and agreed by and between the government and counsel for defendant Michael Farr that Mrs. Farr, who is the same person as Mrs. Ritter, and who resides on Pleasant Ridge Road, Harrison, New York, and whose name appears in Government Exhibit 6 in evidence, is the mother of the defendant, Michael Farr.

MR. KRIEGER: That is correct, sir.

[351] THE COURT: Back to Mr. Stone, it isn't enough to know whether it was the address. Was he there all of August?

MR. ROHRER: The government assumes that the stipulation covered the month of August.

MR. STONE: We will stipulate it was the month of August.

THE COURT: He lived there during the month of August and that was his phone number?

MR. STONE: Yes.

THE COURT: All right.

MR. ROHRER: With that, your Honor, the government rests.

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[391-1] DIRECT EXAMINATION OF
RALPH FEOLA

Q What is your address?

A 16 North Broadway, White Plains, New York.

Q I direct your attention to August 31, 1972. Were you in the City of White Plains on the morning of that day?

A Yes, sir.

Q Did there come a time when you left White Plains?

A Yes.

Q Would you tell the jury and the Court where if any place you went?

A I went down to Manhattan for the day and I stopped at an apartment in the City.

Q Do you know whose apartment that is?

A Yes, I do.

Q Whose is that?

A Mr. Tanderone, he is a medium, a spiritualist.

Q Does he have a church in his house?

A Yes.

Q Have you been there on prior occasions?

A Yes.
Q Approximately how many prior occasions?
A That was about the third time.
[391-2] Q August 31 was the third time?
A Yes.
Q Do you recall what time you went to the apartment? That is approximately.
A 2:30, three o'clock.
Q Did you knock on the door?
A Yes, I did.
Q Did anybody answer the door?
A No.
Q What did you do then?
A The door was open. It was partially opened.
Q What happened?
A I walked into the room, the foyer. I didn't just want to walk in. I knocked like that and as I walked in ten or 15 feet I saw Mr. Alsondo.
Q When you immediately walk into the apartment what is to the right?
A The church.
Q When you say a church would you tell the jury exactly what it is?
A It's an altar. It's not a big church. The man is a medium, it's a spiritualist. He can look at you and tell you things nobody else can tell about you. The man has a big following. You go up there and there are five, seven [391-3] people.
THE COURT: He is not describing the room, strike it out.
Q Describe the room.
A They have a statue of a madonna, pictures of Christ.
Q How many religious symbols would you say are in the room?
A Maybe ten.
Q When you walked into the apartment did you see anybody?
A Yes, I did.
Q Who did you see?
A Tito.

Q Do you know Tito?
A Yes.
Q Did you know him before that day?
A Yes.
Q For approximately how long did you know him?
A Less than a year.
Q Did you know Henry Rosa?
A Yes.
Q How long did you know him?
A From today?
[391-4] Q From August 31.
A About four, three months.
Q Did you know Michael Farr?
A Yes.
Q How long did you know Michael Farr?
A A couple of years.
Q Michael Farr lives in Westchester County, does he not?
A Yes, about three, four miles from me.
Q So you saw Mr. Alsondo?
A Yes.
Q Did you see anyone else?
A No.
Q What did you say to him and what did he say to you?
A I said hi "Tito" and he said hi. I said is the priest home, the padrone.
Q Who?
A Out of respect he has to be addressed good father.
Q What did "Tito" say to you?
A As we were talking there was a door knock and I said "Where is the old man" and he said "Get out of here, it's none of your business" and I went into the living room and he pushed me in the closet.
THE COURT: Who is the he?
[391-5] THE WITNESS: Mr. Alsondo.
Q Where is that closet located?
A From the door to here.
Q Approximately five feet from the front door?
A Four feet.
Q What was in that closet?

A A lot of clothes, bags.
Q Suitcases?
A Yes.
Q Did there come a time when you heard a noise?
A Yes, I heard a lot of noises.
Q What were the noises you heard?
A There were people in the apartment, a lot of people came into the apartment. I heard voices. I couldn't make out the voices. I heard—I don't know if I actually heard Federal agents but I heard a lot of screaming and I got very, very scared.
Q You heard a lot of screaming?
A Yes.
Q What else did you hear?
A A lot of screaming, you know, beatings and people—
MR. ROHRER: You can't hear a beating.
THE COURT: You heard some noise?
THE WITNESS: Yes.
[391-6] Q Did you hear voices yelling?
A Yes
Q What were the voices saying?
A The voices weren't saying much, stop, please, you are getting beat up.
MR. ROHRER: Objection.
THE COURT: Strike it out.
Q In any event, you heard a lot of noise?
A Yes.
Q Did there come a time when you opened the closet?
A I was too scared to open it.
Q Did there come a time when the closet was opened by someone else?
A Yes, it was.
Q Would you show the jury in what position you were when the closet was opened?
A I was sitting down. I was like on a box and when they opened the closet I had my hands—I don't know who they were, I don't know if my hands were like this or like that and they took me out of the closet. They said police officers.
Q Were you ushered into the living room in that apartment at that time?

A Yes.

* * * *

[393] Q After you left Mr. Tanderone in the closet, what did you do then?
A I then went back out in to the main area of the apartment and started searching, looking through the apartment [394] for other defendants, weapons, etcetera. About three or four minutes later, I started in the living room, bathroom, hall closets. Three or four minutes later, I came back into the room that leads to the exit of the entrance of the apartment and I found the defendant Feola in the hall closet.
Q Up to this point in time, did you hear any shouts, screams or any kind of protestations?
A No, sir, I did not.
Q Incidentally, going back a step, how long after the informer got down to you that you got up to the apartment?
A I would say approximately two to three minutes.
Q You say you found the defendant Feola in the closet?
A Yes.
Q Do you see Feola in the courtroom?
A Yes.
Q Would you point him out?
A He's the gentleman at the end of the bench with the mustache and maroon jacket.
MR. ROHRER: May the record reflect he has identified Mr. Feola.
THE COURT: Yes.
Q What was his position when you first observed him in the closet?
A When I opened the closet door, he was in a squat-
[395] like position. In other words, he was crouched.
Q Where were his hands?
A Well, as I opened the door, I had my weapons drawn and his hands went up to shield his face.
Q What did you do then?
A I told him to put his hands on his head.
Q Where did you take him?

A I assisted him up and took him into the dining area and I had no cuffs at the time, so I told him to lie face down in the dining room, put his hands behind his back.

* * * *

[512] COURT'S INSTRUCTIONS TO JURY

* * * *

In order to convict a defendant on the first count, that is, the conspiracy count, the government must prove to your satisfaction beyond a reasonable doubt the following essential elements:

One, the existence of the conspiracy charged in the indictment.

Two, that the defendant knowingly associated himself with the conspiracy, that is, as I will explain to you later, you must treat the case of each defendant separately and

Three, that one of the conspirators in the Southern District of New York, that is in this instance Manhattan, committed at least one of the overt acts specified in the [513] indictment at or about the time and place alleged therein.

It's not required that the government prove that a conspiracy stated and ended on the dates alleged in the indictment. It's sufficient if you find that in fact a conspiracy was formed and existed for some time within that period and that at least one of the overt acts was committed in furtherance of the conspiracy. The offense of conspiracy, members of the jury, is complete when the unlawful agreement is made and any single overt act is thereafter knowingly committed by at least one of the co-conspirators in furtherance of the purpose of the conspiracy.

What is a conspiracy? It's a combination of an agreement of two or more persons by concerted action to accomplish a criminal or unlawful purpose as charged in the first count to forcibly assault, resist, impede, and interfere with the agents of the Bureau of Narcotics

and Dangerous Drugs in the performance of their official duties.

In this connection, it is not necessary for the government to prove that the defendants or any of them knew that the persons they were going to assault or impede or resist were federal agents. It's enough, as far as this particular element of the case is concerned, for the government to prove that the defendants agreed to conspire to commit an assault.

[514] An assault is defined as an unlawful attempt or offer through force and violence to do injury to the person of another with such apparent present possibility of carrying out such a threat as to put the person against whom the attempt was made in fear of personal violence. The drawing of a handgun against another person would be an assault. A robbery is the stealing of property or money from a person by the use or threat of physical force, such as a handgun. It includes an assault so that if you find that a purpose of any conspiracy was to rob agents Hall or Lightcap of seventeen thousand dollars in cash, that would constitute an assault and such proof would be sufficient insofar as this particular element of the case is concerned.

A person commits larceny when with the intent to deprive another of his property or to appropriate the same to himself or a third person he wrongfully takes, obtains or withholds such property from the owner. Larceny does not involve an assault. Therefore, if you find that a conspiracy existed among these defendants or some of them, and the conspiracy's only purpose was to commit a larceny or to commit a fraud upon Agents Hall and Lightcap by selling them sugar, which the agents thought to be heroin, this will not support a finding by you that the defendants are guilty on Count One, if that is all they did.

* * * *

[520] It's the government's contention as to this conspiracy that its object or purpose was getting away from Agents Hall and Lightcap, the so-called flashroll, containing seventeen thousand dollars in currency which

the government contends the agents had with them at the apartment. And that this money was to be obtained either by fraud, that is by selling them sugar in place of heroin, and by assaulting or in effect robbing them of the money if they became suspicious of the heroin and decided to test it. If you find that such a conspiracy existed, then each member of the conspiracy at the time of the commission of a criminal act by one member thereof done in furtherance of the conspiracy will be [521] criminally liable, together with the co-conspirator who performed the criminal act in question. In this case, assaulting a federal officer.

There is no evidence that the defendant Feola personally assaulted any one. Accordingly, in connection with the second count, if you do not find the defendant Feola was a member of the conspiracy and guilty in connection with Count One, you may not find him guilty with respect to Count Two. If you find that he was, on August 31, 1972, a member of the conspiracy and further find that either Alsondo or Rosa assaulted a federal officer on that day in the course of the conspiracy during its existence and in furtherance of its purposes, and that the one who assaulted was also a member of the conspiracy, then you should find Feola guilty of the substantive charge in this Count Two, under the agency theory arising out of a conspiracy, which I previously mentioned to you, pursuant to which every member of a partnership in crime is the agent for the other members as to criminal acts committed during the existence of and in furtherance of the purposes for which the conspiracy was organized.

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[523] As to the second count, the defendants are charged with having violated Section 111 of Title 18 of the United States Code, which provides in pertinent part that, "Whoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in Section 1114 of this Title, while engaged in or on account of the performance of his official duties, is guilty of a crime."

Section 1114 of the Code, Title 18, designates among other people an officer or employee of the Bureau of Narcotics and Dangerous Drugs, so reading these two sections of the law together then, an assault on a Bureau of Narcotics and Dangerous Drugs officer, engaged in the performance of his official duties, constitutes a federal crime.

In order to find a defendant guilty, you must be satisfied beyond a reasonable doubt of the following facts: First, that on August 31, 1972, Jeffrey Hall and Irvin Lightcap were employed by the Bureau of Narcotics and Dangerous Drugs. Second, that on that same date, the defendant forcibly assaulted or resisted or opposed or impeded or intimidated or inter- [524] fered with Agents Hall and Lightcap or either of them. Third, that the defendants wilfully did the act or acts charged and, fourth, that at the time the Agents Hall and Lightcap were engaged in the performance of their official duties.

You are instructed that it is not necessary that the government prove that any defendant assaulted, resisted, opposed, impeded, intimidated and interfered with the federal officers as charged in the indictment. It is sufficient that any one of these acts proved as charged. In other words, in the indictment, there is an "and" which connects up all these acts, but the law is that if any one of these acts, assault, resistance, opposition, impeding, intimidating or interfering, was proved, that is sufficient for conviction on that particular charge.

I have previously defined for you what an assault is, that is, an unlawful attempt or offer with force and violence to do injury to the person of another, such as drawing a gun with such apparent present possibility of carrying out such an attempt as to put the person against whom the attempt was made in fear of personal violence, the drawing or starting to draw a handgun in the attempted execution of a robbery would constitute an assault.

The word resistance is defined as follows:

To oppose by physical power, to strive against, to [525] exert once is to counteract, defeat or frustrate.

The word oppose means to resist by physical means.

Impede is defined as stopping progress, to obstruct, to hinder. Intimidate is defined as follows: To make timid or fearful, to inspire or affect with fear, to frighten, to deter, to overawe or to cow somebody.

I believe I have previously mentioned to you that the statute does not require that the defendant know either the identity of the person assaulted or impeading or intimidated or that the person assaulted is a federal officer.

* * * *

SJPREME COURT OF THE UNITED STATES

No. 73-1123

UNITED STATES, PETITIONER

v.

RALPH FEOLA

ORDIR ALLOWING CERTIORARI. Filed April 15, 1974.

Tle petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

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